

# EXHIBIT F

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE NOV-21-2002 \*\*\*\*\* TIME 14:07 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=NOV-21 14:04

END=NOV-21 14:07

FILE NO.=613

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	*	466616100658201	006/006	00:02:40

-LEWIS RICE & FINGERSH -

\*\*\*\*\* -314 444 7666 - \*\*\*\*\* 314 444 7666- \*\*\*\*\*

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TO:	FAX NUMBER:	TELEPHONE NUMBER:
Joseph D. McCarthy, IRS	610-865-8201	610-865 6332, ext 103
cc: Lawrence H. Welman	LRF/STL	

FROM:	William J. Falk
DATE	November 21, 2002
TOTAL PAGES (WITH COVER):	6
CLIENT/MATTER NUMBER:	110515.28994

COMMENT: Please see the attached letter.

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Penske  
006444

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE NOV-21-2002 \*\*\*\*\* TIME 13:56 \*\*\*\*\*

MODE = MEMORY TRANSMISSION  
START=NOV-21 13:53 END=NOV-21 13:56  
FILE NO. = 512  
STN NO. COMM. ABBR NO. STATION NAME/TEL NO. PAGES DURATION  
001 OK 9612777 006/006 00:02:08  
-LEWIS RICE & FINGERSH -

\*\*\*\*\* -314 444 7666 - \*\*\*\*\* 314 444 7666- \*\*\*\*\*

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November 21, 2002

Mr. Joseph D. McCarthy  
Internal Revenue Service  
3 Bethlehem Plaza  
Bethlehem, Pennsylvania 18018

**BY FAX**

Re: Richard H. Penske and Patricia L. Penske  
Announcement 2002-97 penalty considerations

Dear Mr. McCarthy:

During our conversation on November 1, 2002, I requested a computation of what the tax consequences would be if Mr. and Mrs. Penske were to accept the settlement proposal under Announcement 2002-97. In addition, we discussed some of the facts and circumstances that lead us to the conclusion that Mr. and Mrs. Penske should not be subject to penalty in connection with the deficiencies, if any, that may result from this examination. You requested that we make a written submission on that subject, and later you supplied a set of nonexclusive criteria you have been instructed to consider in making your penalty determinations. Although much if not all of this information has been submitted earlier in responses to various information document requests, I will attempt in this letter to present the facts relevant to your determination.

In 1983, Mr. Penske, as President of Piercing Pagoda, Inc. ("Pagoda"), began to work with KPMG LLP ("KPMG") as the outside auditor of Pagoda. The audit review by KPMG was comprehensive, questioning every aspect of Pagoda's assets, liabilities, and activities, and Pagoda's accounting for them. In each instance, KPMG insisted that Pagoda adhere to the highest ethical and reporting standards for accounting and tax matters. Mr. Penske became the Chief Executive Officer of Pagoda in 1986.

The auditing process became even more strict and demanding as Pagoda prepared for and made its initial public offering in 1994. In 1996, KPMG began to provide estate planning, investment advisor selection, and asset allocation advice to Mr. Penske personally. As a result of 14 years of financial accounting audits of Pagoda by KPMG, Mr. Penske believed that any structure that could pass KPMG's due diligence process must, at a minimum, satisfy all relevant legal, tax, and accounting guidelines. Mr. Penske had absolute confidence in the judgment of KPMG on these matters and therefore felt comfortable considering just the investment or business aspects of anything KPMG might suggest. Despite Mr. Penske's background, independence, and confidence in general business matters, he felt that it was right and necessary that the advice of KPMG on matters of tax and accounting be given substantial weight in his decision-making process.

## LEWIS, RICE & FINGERSH, L.C.

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Page 2

Pagoda was and is in the retail jewelry business. In his capacity as Chief Executive Officer of Pagoda, Mr. Penske initiated a gold-consignment program the principal benefit of which was to allow Pagoda to finance its gold merchandise at rates that were less than its traditional bank borrowing rates. Although not a stock warrant investment per se, the gold-consignment program functioned using similar techniques.

Mr. Penske was a reasonably sophisticated investor whose holdings included a variety of ventures, some self-managed securities investment accounts, and some manager-advised securities investment accounts. Industry groups covered included banking and finance, biotech, health care, hardware and software, telecommunications, retail, and gaming. The portfolio investments included companies operating domestically, as well as companies with predominantly foreign operations, particularly in Europe and Asia. Portfolio investments took both long and short positions, depending on economic conditions and where his advisors, fund managers, and he saw opportunities for profit.

As a member of the board of directors of a banking institution, Mr. Penske was aware of other institutions, both domestic and foreign, engaged in the banking business and the potential attractiveness of investing in some of those institutions. Since the summer of 1996, Mr. Penske had had an interest in European banks. Mr. Penske also had been attending the Basel (Switzerland) Jewelry Shows for years on behalf of Pagoda and, as a consequence, had some first-hand experience with and knowledge of Swiss banks. By mid-1997, Mr. Penske believed that, due to anticipated European bank mergers in the third and fourth quarter of 1997 and more general business considerations, there was a substantial potential for investment profit in European banks, particularly Deutsche Bank and Union Bank of Switzerland ("UBS"). At that time, UBS was the largest bank in Switzerland, and its stock was traded on the Swiss stock exchange. Mr. Penske believed that such stocks were interesting both for their investment potential and also (as a result of their holdings of Swiss and other currencies) as a means of reducing the potential for loss in the value of his stock in Pagoda attributable to fluctuations in foreign currencies resulting from Pagoda's purchases abroad of gold used in its business. Mr. Penske's interest in UBS began substantially before he first learned about the potential investment in Pinegrove Capital, Inc. ("Pinegrove") or the use of Pinegrove or any other entity to acquire a position in UBS. At the time he first became interested in investing in UBS, Mr. Penske neither had nor received any information relating to potential tax benefits to be derived from an investment in UBS.

In August 1997, a KPMG representative made a presentation and recommendation to Mr. Penske with respect to a proposed investment strategy that involved an investment in one or more European bank stocks. That representative subsequently introduced Mr. Penske to QA Investments, LLC ("Quadra"), an investment advisor. Quadra was also enthusiastic about European bank stocks at this time, viewing them as having a promising potential for growth, with limited risk of decline in value. Quadra had designed the method—recommended by KPMG

## LEWIS, RICE & FINGERSH, L.C.

November 21, 2002

Page 3

and ultimately utilized by Mr. Penske—of making leveraged investments in European bank stocks. Mr. Penske understood that, by purchasing the warrant issued by Pinegrove at that time of potentially-substantial growth, he was able to take a large, fully-leveraged position in UBS that was not otherwise available to him in the United States.

KPMG also provided information to Mr. Penske regarding potential income tax benefits and detriments of investing in the stock of UBS or Deutsche Bank and the warrant of Pinegrove, and how an investment in UBS would affect his overall asset allocation and tax planning.

Mr. Penske decided to pursue the plan recommended by KPMG and Quadra for investment in UBS directly and through Pinegrove. He commenced the plan in the fall of 1997 and disposed of the last of his holdings in UBS in 1999. Quadra executed the transactions, and provided advice with respect to the investment positions. Mr. Penske received tax opinions with respect to the consequences of the transactions from the national accounting firm KPMG (his regular tax advisors) and from the New York City law firm of Brown & Wood (now Sidley Austin Brown & Wood). The KPMG opinion is dated August 12, 1998, and the Brown & Wood opinion is dated August 28, 1998. Mr. and Mrs. Penske filed their 1997 Form 1040 on or about October 10, 1998.

Mr. Penske's tax returns included the following items related to the transactions under review:

year	description	sale price	adjusted basis	gain (loss)
1997	UBS Options	232,258	3,312,829	(3,080,571)
1997	UBS Stock	1,238,420	15,305,981	(14,067,561)
1997	Pinegrove Warrant	0	1,260,000	(1,260,000)
1997	UBS Call Options (appears to be a duplicate entry)	232,258	218,202	14,056
1998	100 shares USBAG	31,191	369,511	(338,320)
1999	50 United Bk SW W/D/R	13,822	184,755	(170,934)

Mr. Penske did not attempt to conceal or disguise the transactions or the items related to the transactions on his tax returns, listing these items in the usual manner, along with well over 100 other Schedule D items on each of his returns for 1997, 1998, and 1999.

Examination of the 1997 Form 1040 commenced in July 2001. Later, the examination expanded to include the 1998, 1999, and 2000 tax returns. Hundreds of pages of documents, together with narrative responses to questions, were submitted on September 13, 2001, October

Penske  
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## LEWIS, RICE & FINGERSH, L.C.

November 21, 2002

Page 4

12, 2001, December 7, 2001, February 22, 2002, and March 7, 2002. Responses to the most recently received information document requests are being prepared at this time.

Mr. and Mrs. Penske have cooperated fully with the Internal Revenue Service in this examination. They were not eligible to participate in the Disclosure Initiative under IRS Announcement 2002-2 (the "Announcement") because the transactions were already under examination when the Disclosure Initiative commenced upon the issuance of the Announcement on December 24, 2001. By that time, however, all or substantially all of the documents and information related to the transactions in controversy had been submitted to the IRS, so a disclosure under the Announcement would not have provided additional information to the IRS and was not authorized under the Announcement.

In summary, we submit that:

- Mr. Penske participated in the transactions at issue for bona fide investment purposes, with a realistic expectation that he could make a substantial profit, and with the belief that KPMG personnel would not have recommended the strategy if it did not meet the highest standards of legal, tax, and accounting propriety. Prior to receiving this recommendation, he had worked for 14 years with KPMG personnel in connection with both business and personal matters, and had come to believe deeply that they were difficult to satisfy but principled. As a result, he felt confident that the structure of the transaction was solid and correct.
- As an investor, a bank board member, and a regular business visitor to Switzerland, he was interested in the stock of UBS before hearing anything about the transactions in controversy. As he perceived the proposal, the transactions at issue appeared to combine an investment in UBS that he deemed to have substantial potential for profit with certain tax benefits. His extensive experience with KPMG—in which they insisted on conformity with the highest standards in legal, tax, and accounting matters—not only gave him confidence with the structure of the plan, as noted above, but reinforced his interest in UBS (or Deutsche Bank). In addition, KPMG introduced Mr. Penske to Quadra personnel who shared his enthusiasm for UBS and who executed the transactions. Thus, from an investment perspective, Mr. Penske approached the transaction confident in its potential for nontax investment profits.
- Finally, the tax consequences of the transactions were supported by opinions not only of KPMG, but of a nationally recognized and respected law firm, Brown & Wood (now Sidley Austin Brown & Wood). He has cooperated fully with the examination and provided all of the information that would have been required under the Announcement even though he did not qualify for participation in the Disclosure Initiative.

**LEWIS, RICE & FINGERSH, L.C.**

November 21, 2002

Page 5

We respectfully submit that, based upon all of the relevant facts and circumstances, Mr. and Mrs. Penske should not be subjected to penalty with respect to their participation in the transactions at issue.

Very truly yours,

LEWIS, RICE & FINGERSH, L.C.

By 

William J. Falk



# EXHIBIT G

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE DEC-04-2001 TIME 09:42 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

FILE NO. = 110

START=DEC-04 09:38

END=DEC-04 09:42

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	2	478816108658201	004/004	00:01:34
002	OK	2	478814042227633	004/004	00:01:10

-LEWIS RICE & FINGERSH -

\*\*\*\*\* -314 444 7788 - \*\*\*\*\* 314 444 7788- \*\*\*\*\*

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TO:	FAX NUMBER:	TELEPHONE NUMBER:
Joseph D. McCarthy, IRS	610-865-8201	610-865-6332, ext 103
Sheldon Kay	404-222-7633	404-614-8620
cc: Lawrence H. Weltman	LRP/STL	

FROM:	William J. Falk
DATE:	December 4, 2001
TIME:	
TOTAL PAGES (WITH COVER):	3
CLIENT/MATTER NUMBER:	110515.28994

**COMMENT:** Mr. McCarthy, I have attached a new Form 2848 (Power of Attorney and Declaration of Representative) for Mr. and Mrs. Penske. I will send a hard copy original to you by mail. As my partner Lawrence Weltman advised you yesterday, we now expect to respond to the remaining information document requests shortly.

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Penske  
005569

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TEL (314) 444-7600  
FAX (314) 612-7749

December 4, 2001

Mr. Joseph D. McCarthy  
Internal Revenue Agent  
Internal Revenue Service  
3 Bethlehem Plaza  
Bethlehem, Pennsylvania 18018

Re: Richard and Patricia L. Penske  
SSN 192-34-9695 (RP), Tax Periods 1997, 1998, 1999, Form 1040  
Form 2848 (Power of Attorney and Declaration of Representative)

Dear Mr. McCarthy:

I have enclosed a new Form 2848 (Power of Attorney and Declaration of Representative), revoking and replacing the prior form. This is a duplicate of the form faxed to you on December 4, 2001. As I mentioned in my fax, we now expect to respond to the remaining information document requests shortly.

Very truly yours,

LEWIS, RICE & FINGERSH, L.C.

By 

William J. Falk

Enclosure

Penske  
005570

**Power of Attorney  
and Declaration of Representative**

► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Function \_\_\_\_\_

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Part I** Power of Attorney (Please type or print.)

**1** Taxpayer information (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address

Richard Penske and Patricia L. Penske  
1851 Saucon Valley Road  
Bethlehem, PA 18015

Social security number(s)

192 : 34 : 9695

208 : 38 : 7973

Daytime telephone number

Employer identification  
number

Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2** Representative(s) (Representative(s) must sign and date this form on page 2, Part II.)

Name and address

William J. Falk, Esq.  
500 N. Broadway, Suite 2000  
St. Louis, MO 63102-2147

CAF No. 8000-16554R

Telephone No. (314) 444-7749

Fax No. (314) 612-7749

Check if new: Address ☐ Telephone No. ☐

Name and address

Lawrence H. Weltman, Esq.  
500 N. Broadway, Suite 2000  
St. Louis, MO 63102-2147

CAF No. 8000-08918R

Telephone No. (314) 444-7777

Fax No. (314) 612-7777

Check if new: Address ☐ Telephone No. ☐

Name and address

CAF No. \_\_\_\_\_

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Check if new: Address ☐ Telephone No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

**3** Tax matters

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Income Tax	1040	1997, 1998, 1999

**4** Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for Line 4—Specific uses not recorded on CAF.) ☐

**5** Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for Line 5—Acts authorized).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_

**Note:** In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

**Note:** The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

**6** Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund check(s) ► \_\_\_\_\_

- 7 **Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☒ **X**
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box ☒ **X**
- c If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 **Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

*Richard Penske*

Signature

11/30/01

Date

Title (if applicable)

Richard Penske

Print Name

*Patricia L. Penske*

Signature

11/30/01

Date

Title (if applicable)

Patricia L. Penske

Print Name

## Part II Declaration of Representative

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
  - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
  - d Officer—a bona fide officer of the taxpayer's organization.
  - e Full-Time Employee—a full-time employee of the taxpayer.
  - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
  - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
  - h Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

► **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.**

Designation—Insert above letter (a-h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
a	MO	<i>[Signature]</i>	12-4-01
a	MO	<i>[Signature]</i>	11/4/01

Penske  
005572

# EXHIBIT H

# LEWIS, RICE & FINGERSH, L.C.

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**COMMENT:** Mr. McCarthy, I have attached a new Form 2848 (Power of Attorney and Declaration of Representative) for Mr. and Mrs. Penske. I will send a hard copy original to you by mail. As my partner Lawrence Weltman advised you yesterday, we now expect to respond to the remaining information document requests shortly.

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Penske  
005431

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By 

William J. Falk

Enclosure

Penske  
005432



**Power of Attorney  
and Declaration of Representative**

► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Function \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**Part I** Power of Attorney (Please type or print.)

**1** Taxpayer information (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address Richard Penske and Patricia L. Penske 1851 Saucon Valley Road Bethlehem, PA 18015	Social security number(s) 192 : 34 : 9695	Employer identification number
	208 : 38 : 7973	
	Daytime telephone number	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2** Representative(s) (Representative(s) must sign and date this form on page 2, Part II.)

Name and address William J. Falk, Esq. 500 N. Broadway, Suite 2000 St. Louis, MO 63102-2147	CAF No. 8000-16554R Telephone No. (314) 444-7749 Fax No. (314) 612-7749 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address Lawrence H. Weltman, Esq. 500 N. Broadway, Suite 2000 St. Louis, MO 63102-2147	CAF No. 8000-08918R Telephone No. (314) 444-7777 Fax No. (314) 612-7777 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

**3** Tax matters

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Income Tax	1040	1997, 1998, 1999

**4** Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for Line 4—Specific uses not recorded on CAF.) ☐

**5** Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for Line 5—Acts authorized).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_

**Note:** In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

**Note:** The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

**6** Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund check(s) ► \_\_\_\_\_

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☒ **X**
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box ☒ **X**
- c If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

*Richard Penske*

Signature

11/30/01

Date

Title (if applicable)

Richard Penske

Print Name

*Patricia L. Penske*

Signature

11/30/01

Date

Title (if applicable)

Patricia L. Penske

Print Name

**Part II Declaration of Representative**

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
  - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
  - d Officer—a bona fide officer of the taxpayer's organization.
  - e Full-Time Employee—a full-time employee of the taxpayer.
  - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
  - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
  - h Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

Designation—Insert above letter (a-h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
a	MO	<i>[Signature]</i>	12-4-01
a	MO	<i>[Signature]</i>	12/4/01

Penske  
005434

# EXHIBIT I

# CONDENSED TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD H. PENSKE                      CIVIL ACTION  
and PATRICIA L. PENSKE,

Plaintiffs,

vs.

LEWIS, RICE & FINGERSH,  
L.C.,

Defendant.

NO. 05-CV-4436

Oral deposition of RICHARD  
HERMAN PENSKE, taken at the law  
offices of KOHN, SWIFT & GRAF, P.C.,  
One South Broad Street, Suite 2100,  
Philadelphia, Pennsylvania, on  
Friday, March 17, 2006, at  
approximately 12:35 p.m., before  
Rosemary Locklear, Registered  
Professional Reporter, Certified  
Shorthand Reporter (NJ), Certified  
Realtime Reporter and Notary Public,  
pursuant to notice.



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<p style="text-align: center;">22</p> <p>1 about the -- the capital gains and  2 the impact of that transaction on  3 capital gains and the impact of that  4 transaction to estate planning.  5 They -- they indicated that  6 they had an office of professional --  7 professionals in Dallas that  8 specialized in high-end estate  9 planning and tax transactions and  10 that they -- they could save me  11 significant dollars.  12 Q. Do you know if the -- Mr.  13 Van Borys and the other person from  14 Heritage traveled from Dallas to  15 Pennsylvania for purposes of this  16 meeting?  17 A. I have no idea.  18 Q. Was there anyone from  19 Lewis, Rice &amp; Fingersh, L.C. -- I'll  20 just call them Lewis Rice throughout  21 the remainder of this deposition.  22 Was there anyone from Lewis Rice at  23 that meeting?  24 A. No, there wasn't.</p>	<p style="text-align: center;">24</p> <p>1 any specifics with regard to the tax  2 transaction which you would later go  3 forward with in 2000; is that  4 correct?  5 A. That is correct.  6 Q. Did you go on to sign a  7 Confidentiality Agreement with  8 Heritage?  9 A. Yes, I did.  10 Q. Do you recall when you  11 signed that agreement?  12 A. I don't recall.  13 Q. Well, let me ask you this:  14 Did you sign it before you had any  15 further meetings with people from  16 Heritage?  17 A. After that meeting, in  18 order to get to the next step,  19 somewhere in there I signed a  20 confidential -- Confidentiality  21 Agreement and wrote a check to them  22 for either the 22,000 or 22,500.  23 Q. Do you recall when the next  24 meeting was?</p>
<p style="text-align: center;">23</p> <p>1 Q. Were you given any  2 materials at that meeting?  3 A. I don't recall.  4 Q. Did any members of  5 Heritage -- strike that.  6 How did that meeting wind  7 up?  8 A. Their pitch was, as I asked  9 questions, they weren't able to give  10 me more information unless I was  11 willing to give them a -- sign a  12 Confidentiality Agreement and give  13 them a -- a -- like a fee, which was  14 either 22,000 or 22,500.  15 Q. Okay.  16 A. So it was -- it was  17 based -- I had to do that in order to  18 take -- to find out what their exact  19 plan was.  20 Q. So they only discussed  21 generalities with you at the October  22 25th, 2000, meeting?  23 A. That is correct.  24 Q. And they didn't give you</p>	<p style="text-align: center;">25</p> <p>1 A. I believe it was the first  2 week in November.  3 Q. November 3rd sound correct  4 to you?  5 A. That sounds correct.  6 Q. Now, you described the  7 Agreement as a Confidentiality  8 Agreement.  9 Who were the parties to  10 that Agreement?  11 A. I know that I -- I signed  12 the Agreement. I'm not sure who else  13 signed it. Tom Reed might have been  14 asked to sign it also, because he was  15 at that meeting with me. And who  16 signed it from Heritage, I have no  17 idea.  18 Q. So according to your  19 recollection, Tom Reed, you, and  20 members of Heritage signed that  21 Agreement.  22 Did Mrs. Penske, your wife,  23 sign that Agreement?  24 A. I don't remember. She was</p>



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<p style="text-align: center;">38</p> <p>1 myself, and subsequently the Heritage  2 corporate jet returned Tom Reed and  3 myself from St. Louis back to  4 Bethlehem.  5 Q. Okay. What I'm trying to  6 understand is, if you recall whether  7 or not it was your idea to go to  8 Dallas on November 27th or not.  9 A. I don't recall.  10 Q. Was it your idea to go to  11 St. Louis on November 27th?  12 A. I wanted -- it was my idea  13 to meet Lewis Rice.  14 Q. Okay.  15 A. Not necessarily the 27th,  16 but it was -- it was my desire to  17 meet Lewis Rice.  18 Q. It was your desire to go to  19 St. Louis to meet with Lewis Rice.  20 A. Correct.  21 Q. When was the first time you  22 heard the name of the law firm Lewis  23 Rice?  24 A. In one of my meetings with</p>	<p style="text-align: center;">40</p> <p>1 that a legal opinion was appropriate  2 and business prudent to do a -- the  3 transaction they were talking about,  4 that it would -- made -- you needed  5 a -- it made sense to have a legal  6 opinion.  7 Q. Do you recall why it made  8 sense to have a legal opinion?  9 A. Because it was a  10 complicated tax transaction.  11 MR. CRONER: Go ahead.  12 BY MR. WEEDE:  13 Q. So someone at Heritage  14 mentioned the name of Lewis Rice.  15 Did they mention where they were  16 located?  17 A. What -- what I recall is I  18 asked for a recommendation. They  19 recommended Lewis Rice and somewhere  20 in the conversation, whether I asked  21 specifically or they told me, that  22 they were a St. Louis law firm.  23 Q. Was Lewis Rice the only law  24 firm that Heritage recommended to</p>
<p style="text-align: center;">39</p> <p>1 Heritage.  2 Q. Can we narrow that down or  3 do you know if it was --  4 A. I don't know if it was  5 the -- the 3rd or the 17th. I'm not  6 certain.  7 Q. But it wasn't the one in  8 October.  9 A. Not to my knowledge. I  10 would say that that's correct.  11 Q. Who told you about Lewis  12 Rice?  13 A. Heritage.  14 Q. Do you recall which member  15 of Heritage, whether or not it was  16 Mr. Van Borys or whether or not it  17 was Mr. Kornman?  18 A. It came up in a meeting.  19 Who mentioned the name, I'm not  20 certain.  21 Q. What did they say with  22 regard to Lewis Rice?  23 A. We were talking about the  24 transaction and the subject came up</p>	<p style="text-align: center;">41</p> <p>1 you?  2 A. That's correct, that they  3 were the only law firm that was  4 mentioned.  5 Q. You didn't ask for names of  6 any other law firms?  7 A. I think with the -- the  8 question came up as to, are you aware  9 of law firms that do legal opinions  10 for these type of transactions and  11 they said that they were aware of a  12 number of them or were aware of a  13 firm or firms that could do it.  14 And I said you have a  15 recommend -- it went on the order,  16 well, is there a recommendation or a  17 name you could give me.  18 And the name that they gave  19 me was Lewis Rice. That's the only  20 name that was given me or that I  21 recall giving me.  22 Q. So there could have been  23 others.  24 A. I don't believe so. The</p>



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<p style="text-align: center;">42</p> <p>1 only one I remember is Lewis Rice.  2 And the reason I say that, if there  3 were multiple -- I'm pretty  4 investigatory and --  5 Q. I'm sorry. You're pretty  6 invested to who?  7 MR. CRONER: Investigatory.  8 MR. WEEDE: Investigatory.  9 Sorry.  10 THE WITNESS: In other  11 words, if there would have been more  12 than one name, I would have  13 remembered. So I only remember the  14 one name, Lewis Rice.  15 BY MR. WEEDE:  16 Q. You didn't think about  17 using a Pennsylvania law firm?  18 A. I did not.  19 Q. You didn't ask Heritage if  20 there were any Pennsylvania law firms  21 that did this type of transaction or  22 that offered opinions on this type of  23 tax transaction?  24 A. I didn't.</p>	<p style="text-align: center;">44</p> <p>1 Q. How long did you meet with  2 members of Lewis Rice that afternoon  3 of November 27th, 2000?  4 A. I'm not sure. Perhaps two,  5 three hours.  6 Q. Were members of Heritage  7 present with you at that meeting with  8 the Lewis Rice attorneys?  9 A. No.  10 Q. So did any of the Heritage  11 members accompany you to St. Louis on  12 the Heritage jet?  13 A. What -- maybe you need to  14 rephrase it. The -- the people  15 flying the airplane were -- were  16 employees of the Heritage.  17 Q. Sure. Good point.  18 A. It was -- it was a Heritage  19 airplane.  20 Q. All right. Did either of  21 the members -- or any of the members  22 of Heritage that you had the meeting  23 with on October 25th, November 3rd,  24 November 17th of 2000 that were</p>
<p style="text-align: center;">43</p> <p>1 Q. What was the first contact  2 you had with any members of Lewis  3 Rice?  4 A. When we arrived in St.  5 Louis on the -- on the 27th.  6 Q. So you didn't receive any  7 phone calls from them.  8 A. No, it was arranged by  9 Heritage.  10 Q. So on November 27th, first  11 you traveled to Dallas.  12 A. Correct.  13 Q. You met with people from  14 Heritage.  15 A. Correct.  16 Q. And then you went to St.  17 Louis to meet with members of Lewis  18 Rice.  19 A. Correct.  20 Q. Were members -- so about  21 what time -- did you show up in St.  22 Louis in the afternoon?  23 A. Yeah. It must have been,  24 say -- yeah, afternoon.</p>	<p style="text-align: center;">45</p> <p>1 presenting you with the tax  2 transaction and their strategies, did  3 any of those individuals accompany  4 you to St. Louis on November 27th,  5 2000?  6 A. I believe that that is  7 correct, meaning that I don't believe  8 any of the presenters of Heritage  9 made that trip with me. They  10 weren't -- they certainly were not in  11 the meeting in -- they were not in  12 the meeting in St. Louis.  13 And I don't believe any of  14 the presenters were on the plane that  15 went from Dallas to St. Louis, just  16 the employees operating the aircraft  17 itself.  18 Q. Okay. Now, what was your  19 reason for visiting Lewis Rice on  20 November 27th?  21 A. To ask them about the  22 transaction, to ask them whether in  23 their legal opinion, because Heritage  24 had mentioned that they had done a</p>



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<p style="text-align: center;">46</p> <p>1 number of opinions on this  2 transaction, I wanted to ask them  3 whether they thought it was a  4 legitimate transaction.  5 They were supposed to be  6 experts in -- in writing tax opinions  7 and tax law, and I didn't want to do  8 a transaction or make a commitment to  9 do a transaction without meeting  10 them, seeing the size of their law  11 firm, were they of substance, would  12 they -- is this a transaction that I  13 should or shouldn't do.  14 I went into St. Louis and  15 Heritage was fully aware of that,  16 that I wasn't going to make a  17 commitment to do a transaction until  18 I had met Lewis Rice and had a chance  19 to interview Lewis Rice and ask them  20 about whether or not this was a  21 legitimate transaction.  22 Was this a transaction if  23 they wrote an opinion it would -- it  24 would hold up under scrutiny if it</p>	<p style="text-align: center;">48</p> <p>1 A. I don't believe. I believe  2 she was not.  3 Q. What individuals at Lewis  4 Rice did you meet with on that day?  5 A. I met -- I clearly met with  6 Gary Kornman. And normally in  7 meetings with Heritage, you've got to  8 remember, there were maybe --  9 MR. CRONER: He asked about  10 Lewis Rice. He asked who you met  11 with at Lewis Rice.  12 THE WITNESS: Oh, I'm  13 sorry. Would you please repeat it.  14 MR. WEEDE: I'm sorry.  15 BY MR. WEEDE:  16 Q. At the November 27th, 2000,  17 meeting that you had in St. Louis  18 with members of Lewis Rice, which  19 members of Lewis Rice did you meet  20 with on that date?  21 A. Okay. The -- Mike  22 Mulligan, Bill Falk, Jaime Mendez,  23 and Larry Weltman. And Tom Reed and  24 myself.</p>
<p style="text-align: center;">47</p> <p>1 was contested by the IRS.  2 Because it was a complex  3 tax transaction and that's the reason  4 you -- you -- you went to firms of  5 the size of Lewis Rice and the  6 substance of Lewis Rice because they  7 had the wherewithal and -- and were  8 represented as doing these type --  9 type of things.  10 So I wanted to know the  11 legitimacy of this transaction.  12 Q. So you wanted to see them  13 in their offices. That's part of it.  14 A. Yes, but I also wanted to  15 ask them questions about the  16 transaction.  17 Q. Of course.  18 Was Mrs. -- you were at  19 that meeting on November 27th in St.  20 Louis with members of Lewis Rice;  21 correct?  22 A. And as was Tom Reed.  23 Q. Tom Reed was there.  24 Was Mrs. Penske there?</p>	<p style="text-align: center;">49</p> <p>1 Q. And at that meeting you  2 discussed the tax strategies that  3 Heritage had presented to you in  4 these meetings in November with the  5 members of Lewis Rice; is that  6 correct?  7 A. It was probably more  8 correct to say that I asked them if  9 they were familiar with the details  10 of the Heritage transaction and they  11 indicated they had.  12 So I don't remember  13 spending much time whereby I asked  14 them to give me the details of the  15 transaction, because Heritage had  16 done that.  17 What I -- so to answer your  18 question, more time was spent talking  19 about the ability to write an opinion  20 concerning the transaction as opposed  21 to all the details of the  22 transaction.  23 Because they -- they --  24 they seemed to be, you know, they --</p>



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<p style="text-align: center;">50</p> <p>1 well prepared and that this was  2 something that they had a great  3 amount of knowledge about and seemed  4 to be very well prepared.  5 Even though this was my  6 first meeting, meaning that I --  7 since Heritage set up the meeting,  8 my -- my belief is that, you know,  9 Heritage pretty much brought them up  10 to speed as to the transaction and  11 they were familiar with this  12 transaction.  13 So when I showed up, they  14 were -- they were pretty  15 knowledgeable and well prepared for  16 that meeting.  17 Q. So you knew that Heritage  18 was giving them information about the  19 tax transaction prior to you meeting  20 with them?  21 MR. CRONER: Objection. No  22 foundation. He didn't say that.  23 THE WITNESS: Yeah. The  24 answer is I -- I have no basis for</p>	<p style="text-align: center;">52</p> <p>1 Rice had been given information from  2 Heritage already about the tax  3 transaction?  4 A. It's hard for me to say  5 that. You have to remember, they  6 recommended Lewis Rice. They set up  7 the meeting with Lewis Rice.  8 So I -- with that, I mean,  9 I didn't think much about it. I went  10 to St. Louis and they -- you know, we  11 had this meeting and I didn't get  12 into the details of the transaction.  13 So there -- there was some  14 type of -- their -- more than likely,  15 there was some type of correspondence  16 and dialogue between Heritage and  17 Lewis Rice.  18 Q. Did you assume that going  19 into the November 27th, 2000, meeting  20 with Lewis Rice, that there would be  21 some communication between Heritage  22 and --  23 A. I really didn't think much  24 about it. I mean, it was more of a</p>
<p style="text-align: center;">51</p> <p>1 that other than they were very well  2 prepared when I was at that meeting.  3 BY MR. WEEDE:  4 Q. I guess let me step back  5 and make sure I understand your  6 testimony.  7 When you left Dallas to go  8 to St. Louis to meet with people from  9 Lewis Rice, were you prepared to  10 explain the Heritage tax transaction  11 to the members of Lewis Rice at that  12 meeting?  13 A. I don't recall that -- that  14 I was prepared to give them the --  15 all the details of that transaction.  16 I -- I -- I was under the  17 understanding that Lewis Rice was --  18 was aware and knew of the Heritage  19 tax transaction. So when I -- when I  20 went there, we didn't discuss much as  21 related to the details of the tax  22 transaction itself.  23 Q. Was that because you  24 understood that the people at Lewis</p>	<p style="text-align: center;">53</p> <p>1 process of me going to Dallas, then  2 going up to St. Louis. Because you  3 have to remember, I -- I had not made  4 a decision to do the Heritage  5 transaction when we went to St.  6 Louis.  7 I was going to St. Louis  8 to -- with Tom with the idea of --  9 of -- of meeting Lewis Rice, talking  10 to them about the legalistic issues  11 around the transaction, about whether  12 or not they -- they -- they -- they  13 could write an opinion and what the  14 opinion, you know, was about.  15 And whether this was a  16 good -- was -- was a tax transaction  17 that -- that I could do and they  18 had -- and they could give me comfort  19 that I wasn't doing anything that  20 wasn't legitimate.  21 Q. Okay. I guess where I'm  22 trying to go with this is just that  23 if they're going to opine about  24 whether or not this is a quote,</p>



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<p style="text-align: center;">54</p> <p>1 unquote, tax transaction you can do,  2 presumably, someone had to explain  3 the tax transaction to them.  4 MR. CRONER: Objection.  5 Objection to form.  6 THE WITNESS: As I say,  7 there was not -- I don't remember  8 giving them any real details of that  9 tax transaction. When I went to that  10 meeting, they seemed to know pretty  11 well my situation as relates to  12 the -- the details of that  13 transaction.  14 MR. WEEDE: Right.  15 BY MR. WEEDE:  16 Q. And so I guess what I'm  17 saying is, you were not prepared to  18 explain the tax transaction to them  19 at that meeting; is that correct?  20 A. Well, I can't say I wasn't  21 prepared to discuss details because,  22 obviously, I had some information  23 about the transaction.  24 Because I'd had a number of</p>	<p style="text-align: center;">56</p> <p>1 meeting, you did or did not have any  2 assumptions? Or were you told by  3 anyone from Heritage that --  4 Well, let me ask you this:  5 If you explained the details of the  6 tax transaction to members of Lewis  7 Rice, was it your understanding that  8 you would be violating your  9 Confidentiality Agreement with  10 Heritage?  11 A. I -- I don't think --  12 MR. CRONER: Objection.  13 THE WITNESS: I don't think  14 I ever thought about it.  15 MR. CRONER: Calls for a  16 legal conclusion to some extent.  17 I'll let you answer the  18 question.  19 BY MR. WEEDE:  20 Q. I'm purely asking about  21 what your understanding is.  22 A. I never thought about it.  23 So I -- in other words, I didn't go  24 in there with an understanding that</p>
<p style="text-align: center;">55</p> <p>1 meetings with Heritage and we had  2 signed a Confidentiality Agreement  3 and they had presented, you know, the  4 tax plan. So I can't say I wasn't  5 prepared.  6 But Heritage didn't say to  7 me, when you go to St. Louis, be  8 prepared to present, you know, our  9 tax strategy. I -- if they would  10 have asked me more detailed  11 questions, I would have responded as  12 I best knew it at that meeting.  13 But the main content of  14 that meeting was questions about  15 could they do the opinion, had they  16 done, you know, other opinions, did  17 they have, you know, what -- tell me  18 a little bit about your law firm.  19 You know, tell me, you  20 know, the reason I should have  21 comfort in you writing the opinion  22 and writing an opinion on this tax  23 transaction.  24 Q. So then going into that</p>	<p style="text-align: center;">57</p> <p>1 there was a -- if -- that I -- I  2 didn't go in there with an  3 understanding that I couldn't say  4 anything about the transaction  5 because of a Confidentiality  6 Agreement.  7 Q. So it was your  8 understanding at the time, as far as  9 your obligations under the  10 Confidentiality Agreement, that you  11 could share the particulars of the  12 tax transaction with Lewis Rice at  13 that meeting.  14 MR. CRONER: Objection.  15 I think he said he didn't  16 think about it.  17 THE WITNESS: Yeah. I  18 never thought about it. Because  19 Heritage referred me to Lewis Rice so  20 I -- I thought if they referred me,  21 they were familiar with the  22 transaction.  23 And when I -- when I got to  24 St. Louis in the meeting, it seemed</p>



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<p style="text-align: center;">58</p> <p>1 that they were familiar with the 2 transaction. 3 MR. WEEDE: Okay. 4 BY MR. WEEDE: 5 Q. So going into the meeting 6 on November 27th, 2000, with the 7 members of Lewis Rice, you assumed 8 they would be familiar with the tax 9 transaction which you were seeking 10 their advice on. 11 MR. CRONER: Objection; 12 asked and answered. 13 THE WITNESS: Again, I 14 can't say that. 15 I -- I clearly went to St. 16 Louis because I wanted to meet the 17 members of the law firm and ask them 18 about writing a legal opinion and 19 could they write an opinion and what 20 was their assessment on whether it 21 was a good transaction or a bad 22 transaction. 23 Or -- because I, at that 24 point, had not made any decision</p>	<p style="text-align: center;">60</p> <p>1 A. Correct. Yes. I would 2 agree -- yes, I would agree. 3 Q. So for them to know what 4 the tax transaction is, either you 5 would have had to tell them what the 6 tax transaction is or Heritage would 7 have had to tell them what the tax 8 transaction is. 9 Would you agree with that? 10 A. I -- I -- you're -- you're 11 making an assumption and I -- I 12 believe it's probably correct, but I 13 can't -- in other words, it's not for 14 me to acknowledge. 15 All I know is when I went 16 in to St. Louis, we didn't spend a 17 lot of time talking about the details 18 of the transaction and they seemed to 19 be up to date with the information. 20 So if you're -- if you're 21 saying assumptions, your assumption 22 could be correct but I can't confirm. 23 Q. I'm just asking what you 24 thought, assumed.</p>
<p style="text-align: center;">59</p> <p>1 whatsoever as to whether I was going 2 to do the transaction or not. 3 And I went to St. Louis to 4 try to get clarification and comfort 5 as to whether this firm should be -- 6 be hired and whether the Heritage 7 transaction should be done. 8 BY MR. WEEDE: 9 Q. I'm not going to belabor 10 the point much longer. I'm really 11 just trying to figure out, if they're 12 going to opine on the tax 13 transaction, which is your point for 14 going to St. Louis and meeting with 15 them on November 27th; is that 16 correct? 17 MR. CRONER: They being 18 Lewis Rice. 19 MR. WEEDE: Correct. 20 MR. CRONER: All right. 21 BY MR. WEEDE: 22 Q. Presumably, they would have 23 to know what the tax transaction was. 24 Would you agree with me on that?</p>	<p style="text-align: center;">61</p> <p>1 A. Well, I mean, once I got 2 there -- 3 MR. CRONER: I'll object. 4 I think he's answered that already, 5 that he didn't think about it. 6 MR. WEEDE: All right. You 7 just didn't think about it. 8 THE WITNESS: Yeah. 9 MR. WEEDE: Okay. All 10 right. 11 BY MR. WEEDE: 12 Q. Now, did you think that 13 Lewis Rice were Heritage's attorneys? 14 A. I -- maybe you should 15 clarify that. 16 Q. Sure. 17 A. What I will say is that 18 Lewis -- Heritage recommended Lewis 19 Rice. Whether there was -- I -- I 20 never thought at the time, was there 21 a relationship between the two. 22 Q. Okay. So up until November 23 27th, you had no understanding 24 whether or not there was a</p>



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<p style="text-align: center;">62</p> <p>1 relationship between -- there was an  2 attorney-client relationship between  3 Heritage and Lewis Rice.  4 A. I wouldn't know that.  5 Q. Okay. Didn't think about  6 it?  7 A. I didn't think about it.  8 Q. Did you know if Lewis Rice  9 had signed any Agreements with  10 Heritage as of that date, that  11 meeting?  12 A. I did not know that.  13 Q. After you left the meeting  14 with the members of Lewis Rice on  15 November 27th, were they your  16 lawyers?  17 MR. CRONER: Objection;  18 vague.  19 Answer it, if you can.  20 THE WITNESS: I -- I think  21 we left the table feeling  22 comfortable, but I don't think I made  23 the decision at that moment.  24 I think it was subsequent,</p>	<p style="text-align: center;">64</p> <p>1 A. Correct.  2 Whether it was, you know,  3 the next day or the day after, but  4 within a day or two, we started to  5 put in place, evidently, the  6 documents and what was necessary,  7 because on December 1 is when the --  8 the engagement letter was signed.  9 And -- and -- and that was December 1  10 that it was signed.  11 Q. I guess what I'm asking you  12 is, had you decided from your end  13 that you wanted to go forward with  14 the tax transaction after you met  15 with Lewis Rice in St. Louis on  16 November 27th, 2000?  17 A. In my own mind, the answer  18 is yes.  19 Q. So I take it you liked what  20 you saw when you met with members of  21 Lewis Rice.  22 A. Yeah. It was clearly a  23 favorable meeting or we wouldn't have  24 gone forward.</p>
<p style="text-align: center;">63</p> <p>1 a day or two or afterward, that we --  2 we finally -- I think the engagement  3 letter was signed December 1. So I  4 would say officially you're talking  5 December 1.  6 BY MR. WEEDE:  7 Q. Okay. So --  8 A. In other words, I didn't  9 sign an engagement letter or indicate  10 to them that they were being hired.  11 I might have given the --  12 from a comfort standpoint, did I --  13 did I -- I felt good about the  14 meeting, but I hadn't -- we hadn't  15 confirmed a relationship on the 27th.  16 Q. So there was no oral  17 agreement between you and members of  18 Lewis Rice that occurred at that  19 November 27th, 2000, meeting.  20 A. That is correct.  21 Q. After leaving that meeting  22 on November 27th, had you determined  23 that you were going to go forward  24 with the tax transaction?</p>	<p style="text-align: center;">65</p> <p>1 Q. But at that moment you did  2 not let them know that you wanted  3 them to be your attorneys.  4 MR. CRONER: At which  5 moment?  6 MR. WEEDE: Good point.  7 BY MR. WEEDE:  8 Q. At that meeting on November  9 27th, 2000, when you met with members  10 of Lewis Rice, you did not let them  11 know that you wanted them to be your  12 attorneys.  13 A. That's my recollection,  14 that I did not confirm at that  15 meeting that I wanted them to be my  16 attorneys.  17 Q. Did you say maybe? How did  18 you leave it with them?  19 A. I think I just said, it was  20 a good meeting. I feel comfortable  21 after meeting with you and we'll get  22 back to you.  23 Q. When do you remember  24 receiving a letter from Lewis Rice</p>



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<p style="text-align: center;">78</p> <p>1 A. I -- I -- I believe so,  2 yes.  3 Q. But at that time they were  4 not -- strike that.  5 Do you recall the specific  6 events that led up to the -- your  7 receipt of this letter on February  8 22nd -- let me step back.  9 Did you receive this letter  10 on or around February 22nd of 2001?  11 A. It's dated the 22nd and  12 there was a meeting in Dallas at the  13 Heritage office on February 22nd.  14 And I know that somewhere in this  15 estate planning process in one of the  16 meetings in Dallas, Mike Mulligan  17 from Lewis Rice was at the meeting.  18 This is dated and  19 corresponds to the date that I had a  20 meeting with Heritage in Dallas. And  21 I recall a meeting with Heritage in  22 Dallas that Mike Mulligan was present  23 and we discussed the PASTrust.  24 My recollection was it was</p>	<p style="text-align: center;">80</p> <p>1 A. I -- I'm -- it's -- it's  2 certainly in my possession, so I  3 don't know if I remember opening up  4 the envelope but -- but, you know, I  5 did -- I did see this letter and I  6 did okay it for payment.  7 Q. And you stated that that  8 was your handwriting in the lower  9 left-hand corner which reads, Charge  10 to RHP Invest, or I-N-V, period?  11 A. Yes.  12 Q. Is it also your  13 handwriting, the numbers on the right  14 side, nine and ten?  15 A. Yes.  16 Q. Could you tell me what  17 those two numbers mean?  18 A. I was -- from the -- we --  19 we got a copy of Lewis Rice billings  20 and I was going through the Lewis  21 Rice billings and our billings and I  22 was just numbering them to see  23 that -- that things matched up.  24 Q. At what time were you doing</p>
<p style="text-align: center;">79</p> <p>1 at this meeting on this date in the  2 Heritage office in Dallas that this  3 letter more than likely was -- was  4 signed and executed.  5 Q. By you?  6 A. Yeah, there's my signature  7 on it.  8 Q. Was Mrs. Penske at this  9 meeting?  10 A. I believe so.  11 Q. I'm done with that one.  12 (Defendant's Exhibit 5 was  13 marked for identification.)  14 BY MR. WEEDE:  15 Q. Mr. Penske, have you had a  16 chance to familiarize yourself with  17 what's been marked as Defendant's-5?  18 A. Yes.  19 Q. Do you recall receiving  20 this letter?  21 A. That is my writing, Charge  22 to RHP Investments.  23 Q. Do you recall receiving  24 this letter, Mr. Penske?</p>	<p style="text-align: center;">81</p> <p>1 this? About what -- what year? Was  2 it around August 31st, 2001, that you  3 were making those notations?  4 A. No. It's within the last,  5 say, six months.  6 Q. Okay. So the numbers on  7 the right were created by you within  8 the last six months --  9 A. Yes.  10 Q. -- in reference to the  11 billing by Lewis Rice to you?  12 A. Correct.  13 Q. Do you know when the  14 handwriting on the left-hand corner,  15 left side, which says Charge to RHP  16 I-N-V, period, was made?  17 A. I mean, I -- I -- at the --  18 at the time I paid the bills my --  19 when I -- when I write Charge RHP  20 Investments, it's normally at the  21 time I'm paying the bill. So I would  22 assume that at the time I paid this  23 bill, that's how I noted it.  24 Q. Okay. What I just wanted</p>



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<p style="text-align: center;">82</p> <p>1 to clarify was that the numbers on 2 the right side were written at a 3 different time than the handwriting 4 on the left side. 5 A. That's correct. 6 Q. Does RHP Investments or 7 does RHP INV, period, refer to RHP 8 Investments, L.P.? 9 A. Yes. 10 Q. So was this bill charged to 11 that entity? 12 A. Was this bill -- I -- I -- 13 I -- I paid this bill from my RHP 14 Investments account. 15 Q. Do you know if RHP 16 Investments, L.P., is a Missouri 17 limited partnership? 18 A. It is. 19 Q. Do you know where its 20 principal place of business is? 21 A. I'm not sure technically. 22 I'm really not. 23 Q. Well, let me ask you this: 24 Do you know what the Partnership</p>	<p style="text-align: center;">84</p> <p>1 had basically completed the estate 2 planning transaction for you? 3 A. I paid the bill, so it -- I 4 would -- I would literally say that 5 that -- it was basically completed. 6 Now, does that mean it's entirely 7 completed? It was an ongoing 8 process, but the -- I would say 9 basically -- 10 Q. As of that time, it was 11 basically completed. 12 A. That's fair. 13 Q. Thanks. 14 A. Was it completely finished? 15 I can't 100 percent. 16 Q. You don't know 100 percent 17 if it was completely finished, but 18 the terms of the letter say it was 19 basically -- 20 A. It was essentially -- the 21 main part of it was done. 22 Q. Thanks. 23 (Defendant's Exhibit 6 was 24 marked for identification.)</p>
<p style="text-align: center;">83</p> <p>1 Agreement says its principal place of 2 business is? 3 A. I'm not certain. 4 Q. Would it surprise you that 5 its principal place of business, 6 according to the Partnership 7 Agreement, was St. Louis, Missouri? 8 A. It wouldn't surprise me. 9 Q. Does that sound accurate to 10 you? 11 A. I don't know. I'd have to 12 look at the document. 13 Q. All right. Let me ask you 14 this: Before I move on to that, do 15 you still have Defendant's-5 in front 16 of you? I'm sorry to make you put 17 that back in front of you. 18 A. Okay. 19 Q. The first sentence there of 20 that letter says, Since we have 21 basically completed the estate 22 planning transaction. 23 Was it true that as of 24 August 31st, 2001, that Lewis Rice</p>	<p style="text-align: center;">85</p> <p>1 BY MR. WEEDE: 2 Q. Mr. Penske, before you -- 3 I'm going to be focusing on Pages 645 4 to 676. You'll find that it's the 5 Agreement of Limited Partnership of 6 RHP Investment, L.P., dated as of 7 December 4th, 2000. 8 A. Okay. 9 Q. So if you wouldn't mind 10 turning to Page Plaintiffs 00645. 11 It's in the lower right-hand corner. 12 MR. CRONER: The problem 13 is, it got chopped a little in the 14 copying. 15 MR. WEEDE: Oh, I'm sorry. 16 MR. CRONER: No. No. No. 17 That's fine. We can find it. Which 18 pages do you want? 19 MR. WEEDE: Just start at 20 00645. 21 BY MR. WEEDE: 22 Q. Do you recognize this 23 document, Mr. Penske? 24 A. I -- I -- I have seen a RHP</p>



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<p style="text-align: center;">86</p> <p>1 Investments agreement. Whether I've  2 seen this specific -- I mean, I'm --  3 I -- probably, yes. I can't -- I  4 don't know every page of the -- of  5 the document, but I know I -- I did  6 form RHP Investments.  7 Q. If you wouldn't mind --  8 A. And this looks like a legal  9 document and probably --  10 Q. Let me see if I can help  11 you out a little bit. Can you turn  12 to Page 22, going by the numbers in  13 the middle of the document.  14 MR. WEEDE: That's  15 essentially -- George, that's Page  16 Plaintiffs 00668.  17 MR. CRONER: Got it.  18 BY MR. WEEDE:  19 Q. Is that your signature  20 there, Mr. Penske?  21 A. Yes.  22 Q. Could you turn to the next  23 page, please. Is that your signature  24 there?</p>	<p style="text-align: center;">88</p> <p>1 MR. CRONER: Objection.  2 But I -- to the extent that that --  3 you're suggesting by that that means  4 he signed it that date, I don't think  5 those dates have any correlation at  6 all.  7 MR. WEEDE: Okay.  8 THE WITNESS: And I would  9 say I -- the partnership I guess is  10 dated the 4th, because this is a copy  11 of the document.  12 BY MR. WEEDE:  13 Q. But you don't know when you  14 signed it.  15 A. That's correct.  16 Q. And you don't know where  17 you were when you signed it.  18 A. Correct.  19 Q. Could you turn to Page 6 of  20 the Agreement, please. That's to the  21 extent mine is chopped off, too, so  22 I'm --  23 A. You're talking about the  24 big Number 6?</p>
<p style="text-align: center;">87</p> <p>1 A. Yes.  2 Q. Do you recall where you  3 were when you signed this Agreement?  4 A. When was this signed?  5 MR. CRONER: Well,  6 that's -- that's the problem.  7 THE WITNESS: Pardon me?  8 MR. CRONER: I'll object to  9 the form because -- if you can answer  10 it. If you remember when and where  11 you were when you signed, you can  12 answer the question.  13 THE WITNESS: I don't see  14 anything on here that indicates the  15 date.  16 BY MR. WEEDE:  17 Q. If you'd go to the  18 Plaintiffs 00645, I'm sorry to keep  19 flipping you back and forth here. I  20 wish I had a better copy.  21 Does that read dated as of  22 December 4th, 2000?  23 A. That's correct.  24 Q. Okay.</p>	<p style="text-align: center;">89</p> <p>1 Q. On the bottom, yeah, in the  2 middle right here.  3 A. Okay. Okay. Number 6.  4 Okay.  5 Q. Do you see Clause 2.4 there  6 where it says, Principal place of  7 business of the partnership?  8 A. Correct.  9 Q. Is it listed as St. Louis,  10 Missouri?  11 A. In this document I'm  12 looking at, that's correct.  13 Q. All right. I'm done with  14 that.  15 Now, Mr. Penske, outside of  16 the tax transaction and the estate  17 planning, did Lewis Rice represent  18 you in any other capacities?  19 A. There were a number of  20 times on a lot of different general  21 tax questions that we -- we called --  22 we talked to Lewis Rice.  23 Q. Okay. Did Lewis Rice  24 represent you in connection with the</p>



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<p style="text-align: center;">90</p> <p>1 audit of your 1997, 1998, and 1999</p> <p>2 tax returns?</p> <p>3 A. Yes, they did.</p> <p>4 Q. Okay. How did that come</p> <p>5 about?</p> <p>6 A. I -- I received notice from</p> <p>7 the IRS in the summer of '01 that I</p> <p>8 was -- my 1997 tax return was going</p> <p>9 to be audited.</p> <p>10 Q. Okay. And then what</p> <p>11 happened?</p> <p>12 A. I at that point made a</p> <p>13 decision to ask Lewis Rice if they</p> <p>14 would -- if this is -- if they -- if</p> <p>15 they would represent me in my tax</p> <p>16 audit.</p> <p>17 Q. How did you ask Lewis Rice</p> <p>18 to represent you in connection with</p> <p>19 your tax audit?</p> <p>20 A. Picked up the phone and</p> <p>21 gave them a call.</p> <p>22 Q. Who did you call?</p> <p>23 A. I'm not certain. The</p> <p>24 two -- the two people that I had the</p>	<p style="text-align: center;">92</p> <p>1 Lewis Rice in St. Louis on August</p> <p>2 2001 with regard to your 1997</p> <p>3 audit -- the audit of your 1997</p> <p>4 federal income tax returns?</p> <p>5 A. To talk about the audit and</p> <p>6 the -- you know, the -- the IDRs that</p> <p>7 the IRS was requesting.</p> <p>8 Q. Did you ask Lewis Rice to</p> <p>9 come to you in Pennsylvania?</p> <p>10 A. No, I didn't. But I</p> <p>11 might add that with their fees being</p> <p>12 what -- what -- what they are, it</p> <p>13 made a lot more sense for me to go to</p> <p>14 St. Louis.</p> <p>15 Q. Is that pretty much your</p> <p>16 philosophy generally with regard to</p> <p>17 your dealings with Lewis Rice?</p> <p>18 A. Pretty much in total. The</p> <p>19 people here will tell you that I</p> <p>20 normally come to Philadelphia for</p> <p>21 meetings. I understand the -- the --</p> <p>22 the bills keep cranking.</p> <p>23 Q. Sure.</p> <p>24 A. And I have sold my</p>
<p style="text-align: center;">91</p> <p>1 most contact was Falk and Weltman.</p> <p>2 So more than likely it was one of</p> <p>3 those two, but it could have been</p> <p>4 Mulligan.</p> <p>5 Q. Okay. Now, did you ever</p> <p>6 travel to St. Louis to visit Lewis</p> <p>7 Rice in connection with the audit of</p> <p>8 your 1997 federal income tax returns?</p> <p>9 A. Yes.</p> <p>10 Q. When was that?</p> <p>11 A. I believe it was August of</p> <p>12 '01. Might have been September, but</p> <p>13 I believe it was August of '01.</p> <p>14 Q. August 14th, 2001, sound</p> <p>15 right?</p> <p>16 A. I'm not certain.</p> <p>17 Q. Did anyone accompany you on</p> <p>18 that trip to St. Louis?</p> <p>19 A. Tom Reed.</p> <p>20 Q. Mrs. Penske go with you?</p> <p>21 A. I -- I don't know.</p> <p>22 Q. Why did you go to visit St.</p> <p>23 Louis -- excuse me. Strike that.</p> <p>24 Why did you go to visit</p>	<p style="text-align: center;">93</p> <p>1 business, so it was just more -- more</p> <p>2 convenient.</p> <p>3 Q. And --</p> <p>4 A. And it made sense.</p> <p>5 Q. It made sense. It was your</p> <p>6 practice to go to St. Louis to visit</p> <p>7 Lewis Rice.</p> <p>8 A. Yes. Yes.</p> <p>9 Q. What was generally</p> <p>10 discussed in that August 2001</p> <p>11 meeting? You said the IDRs.</p> <p>12 A. Yeah. I think we --</p> <p>13 whatever the document --</p> <p>14 documentation that the IRS had</p> <p>15 presented to us to start the audit</p> <p>16 was what was -- what we were -- what</p> <p>17 we discussed.</p> <p>18 Q. Did you sign any documents</p> <p>19 while you were in St. Louis at the</p> <p>20 August 2001 meeting?</p> <p>21 A. I don't remember signing</p> <p>22 any -- any documents.</p> <p>23 Q. Did you visit --</p> <p>24 A. At some point I signed a</p>



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<p style="text-align: center;">94</p> <p>1 Power of Attorney.</p> <p>2 Q. Okay.</p> <p>3 A. But I don't -- don't know</p> <p>4 when. I believe it was signed</p> <p>5 somewhere in order for them to</p> <p>6 represent me in the audit.</p> <p>7 Q. Okay. So it could have</p> <p>8 been signed in St. Louis; is that</p> <p>9 correct?</p> <p>10 A. I -- I don't know.</p> <p>11 Q. You don't know? You have</p> <p>12 no recollection?</p> <p>13 A. No.</p> <p>14 Q. Did you travel again to St.</p> <p>15 Louis in October of 2001?</p> <p>16 A. I don't recall. You might</p> <p>17 have a record of it. I just don't</p> <p>18 recall. I made -- I know I made a</p> <p>19 trip in August and I might have made</p> <p>20 another trip that fall.</p> <p>21 Q. Let me ask you this: Do</p> <p>22 you recall making another trip to St.</p> <p>23 Louis after that August 2001 trip,</p> <p>24 you just don't recall the date, or</p>	<p style="text-align: center;">96</p> <p>1 2001.</p> <p>2 THE WITNESS: Okay.</p> <p>3 BY MR. WEEDE:</p> <p>4 Q. Mr. Penske, do you</p> <p>5 recognize this calendar month? Let</p> <p>6 me strike that.</p> <p>7 Do you recognize this</p> <p>8 document?</p> <p>9 A. It's -- it's the daily</p> <p>10 planner of Tom Reed.</p> <p>11 Q. Directing your attention to</p> <p>12 the 7th, 8th, and 9th, those all say</p> <p>13 St. Louis on them.</p> <p>14 A. Correct.</p> <p>15 Q. Does that refresh your</p> <p>16 recollection whether or not you were</p> <p>17 in St. Louis in October 7th, 8th, and</p> <p>18 9th along with Mr. Reed?</p> <p>19 A. This is his record and if</p> <p>20 he was in St. Louis on these dates, I</p> <p>21 was in St. Louis on these dates.</p> <p>22 Q. Okay. Do you recall on</p> <p>23 those dates you'd be meeting with</p> <p>24 Lewis Rice?</p>
<p style="text-align: center;">95</p> <p>1 you're not sure if you made a trip at</p> <p>2 all?</p> <p>3 A. I think I made another</p> <p>4 trip, but I'm not certain. My</p> <p>5 recollection is I believe I did make</p> <p>6 another trip. I don't have a</p> <p>7 recollection of the date. It's --</p> <p>8 I'm sure there's a record of it.</p> <p>9 Q. I'll see if I can find</p> <p>10 that.</p> <p>11 A. I'm going to excuse myself</p> <p>12 for one minute.</p> <p>13 MR. CRONER: Do you need a</p> <p>14 break?</p> <p>15 (Recess, 2:07-2:11 p.m.)</p> <p>16 MR. WEEDE: Back on.</p> <p>17 MR. CRONER: Sure.</p> <p>18 (Defendant's Exhibit 7 was</p> <p>19 marked for identification.)</p> <p>20 THE WITNESS: This is what?</p> <p>21 October?</p> <p>22 MR. WEEDE: Yes. Sorry.</p> <p>23 It's cut off in the upper right-hand</p> <p>24 corner. I believe it's October of</p>	<p style="text-align: center;">97</p> <p>1 A. I -- I -- there was -- I</p> <p>2 think we did go another time in the</p> <p>3 fall.</p> <p>4 Q. Okay.</p> <p>5 A. And so those dates, yeah,</p> <p>6 that's probably correct.</p> <p>7 Q. Okay. And again, do you</p> <p>8 recall the purpose of that visit?</p> <p>9 A. This was for the 1997 IRS</p> <p>10 audit. I'm certain that's what it</p> <p>11 was for. And this is '01, isn't it?</p> <p>12 October of '01?</p> <p>13 Q. That's correct.</p> <p>14 Did anyone not affiliated</p> <p>15 with -- let me step back.</p> <p>16 Did Mr. Reed also assist</p> <p>17 you with your 1997 federal income tax</p> <p>18 audit?</p> <p>19 A. Did he assist me?</p> <p>20 MR. CRONER: Objection;</p> <p>21 vague.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: Did he assist</p> <p>24 me in doing the '97 audit? I mean,</p>



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<p style="text-align: center;">102</p> <p>1 Q. So Heritage did not 2 represent to you that they were in 3 any way affiliated. 4 A. Right. They did not 5 represent that they were affiliated. 6 Q. Did Lewis Rice represent to 7 you that it was affiliated with -- 8 did any members of Lewis Rice in any 9 way represent that they were related 10 with Heritage to you when they met 11 with you on November 27th, 2000? 12 A. They did not. 13 Q. Since that time did anyone 14 at Lewis Rice represent to you that 15 Heritage was in any way affiliated 16 with Lewis Rice? 17 A. They did not. 18 Q. Did Lewis Rice ever tell 19 you that Heritage had the power to 20 act on its behalf? 21 A. That Lewis Rice had the 22 authority to act on the behalf of 23 Heritage? Is that the question? 24 Q. We can start with that.</p>	<p style="text-align: center;">104</p> <p>1 act on Lewis Rice's behalf? 2 A. No. 3 Q. Did Lewis Rice ever inform 4 you that it had the power to act on 5 Heritage's behalf? 6 A. No. 7 Q. Did Lewis Rice ever take 8 any action which led you to believe 9 that Heritage could act on Lewis 10 Rice's behalf? 11 A. No. 12 Q. Was Heritage ever a party 13 to any agreement between you and 14 Lewis Rice? 15 A. I don't believe so. 16 Q. So you have no 17 recollection? 18 A. I have no recollection. 19 (Defendant's Exhibit 8 was 20 marked for identification.) 21 BY MR. WEEDE: 22 Q. Mr. Penske, if you could 23 take a minute to leaf through this 24 document, familiarize yourself with</p>
<p style="text-align: center;">103</p> <p>1 That's fine. I'm going to ask you 2 both questions. I'm going to ask you 3 whether or not Lewis Rice -- 4 MR. CRONER: I want to know 5 which one he's responding to. 6 MR. WEEDE: That's fair. 7 That's fair. 8 BY MR. WEEDE: 9 Q. Did Lewis Rice ever inform 10 you that Heritage had the power to 11 act on behalf of Lewis Rice? 12 A. No. I said that right; 13 right? 14 MR. CRONER: You answered 15 the question. 16 THE WITNESS: Yeah. Yeah. 17 Yeah. Yeah. No. I'm just -- okay. 18 BY MR. WEEDE: 19 Q. Did Heritage ever inform 20 you that Lewis Rice had the power to 21 act on Heritage's behalf? 22 A. No. 23 Q. Did Heritage ever inform 24 you that Heritage had the power to</p>	<p style="text-align: center;">105</p> <p>1 it. 2 MR. CRONER: To what level 3 of familiarity? 4 MR. WEEDE: Generally. I 5 will give him more time to... 6 THE WITNESS: Okay. 7 BY MR. WEEDE: 8 Q. Do you recognize this 9 document? 10 MR. CRONER: Now, there's 11 actually two documents, so which one 12 are you asking about? 13 MR. WEEDE: Sorry. Let 14 me -- I'm sorry. So this -- George, 15 when you say two documents...? 16 MR. CRONER: Well, there's 17 a fax cover page that has a 18 completely different date than the 19 underlying document. So when you ask 20 that, I don't know whether you're 21 asking him about the cover page or 22 the -- 23 MR. WEEDE: I should 24 probably ask you this. I was</p>



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<p style="text-align: center;">110</p> <p>1 Q. So you signed more than one 2 Confidentiality Agreement? 3 A. I believe they would be 4 classified as Confidentiality 5 Agreements. 6 Q. How many Confidentiality 7 Agreements do you remember signing? 8 A. I don't recall. 9 Q. Do you recall when you 10 signed this one? If I could direct 11 you to -- 12 A. I mean, it's dated. 13 Q. 434. 14 A. 434. It's dated 10/25. 15 Q. Was that at a meeting that 16 you had with the Heritage group? 17 A. I did have a meeting on 18 10/25 with the Heritage group. 19 Q. Do you recall signing that 20 at this meeting? Sorry. Excuse me. 21 Do you recall signing this 22 Agreement at that meeting? 23 A. I don't remember. 24 Q. The other --</p>	<p style="text-align: center;">112</p> <p>1 A. I'm not certain. I mean, 2 there is documents somewhere that 3 would confirm that. There would be a 4 record of the dating. 5 Q. But you don't know from 6 personal knowledge? 7 A. I can't recall. 8 Q. That's all I have for that 9 one. 10 (Defendant's Exhibit 9 was 11 marked for identification.) 12 BY MR. WEEDE: 13 Q. Mr. Penske, the court 14 reporter has handed you Defendant's 15 Exhibit 9, which is the Complaint in 16 this action. 17 Have you seen this document 18 before? 19 A. I've seen the Complaint, 20 yes. 21 Q. Could you turn with me, 22 please, to Paragraph 51. The first 23 sentence there reads, LRF -- and I'll 24 represent to you that LRF refers to</p>
<p style="text-align: center;">111</p> <p>1 A. I mean -- 2 Q. Sorry? 3 A. I mean, there are three 4 dates on this. There's 10/25, 5 November 3, and 10/31. There's a 6 number of dates on here. 7 Q. But your signature and Tom 8 Reed's signature are both on 10/25; 9 is that correct? 10/25/2000? 10 A. Right. But my signature 11 also appears at November 3 under 12 Patrick Capital, so I'm not sure if 13 we -- if it was backdated or -- I 14 mean, I can't -- 15 Q. Okay. 16 A. I mean, you've got -- 17 because if I -- as I say, there's my 18 signature twice with two different 19 dates on it. 20 Q. Now, the other 21 Confidentiality Agreements you said 22 that you signed with Heritage, would 23 they have come after or before this 24 Agreement?</p>	<p style="text-align: center;">113</p> <p>1 Lewis Rice -- and Plaintiffs entered 2 into an attorney-client relationship 3 in or about October 2000 during a 4 meeting between Plaintiff Penske and 5 representatives of LRF. 6 Do you know what meeting 7 that paragraph is referring to? 8 A. The first I met Lewis Rice 9 was the 27th of October. 10 Q. Of November or October? 11 A. Excuse me. 27th of 12 November. 13 Q. So is it your understanding 14 that this should read LRF and 15 Plaintiffs entered into an 16 attorney-client relationship in or 17 about November of 2000 during a 18 meeting between Plaintiff Penske and 19 representatives of LRF? 20 MR. CRONER: Objection to 21 the form. 22 THE WITNESS: The word in 23 or about, I would -- 24 MR. WEEDE: Did --</p>



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<p style="text-align: center;">114</p> <p>1 THE WITNESS: You know, we 2 signed an engagement letter December 3 1 and I met them November 27th. 4 BY MR. WEEDE: 5 Q. Did you enter into an 6 attorney-client relationship with 7 members of Lewis Rice on November 8 27th, 2000? 9 MR. CRONER: Objection; 10 asked and answered. 11 THE WITNESS: I mean, I'm 12 not -- I mean, December 1 is the 13 engagement letter and I think I've 14 answered that question. 15 MR. WEEDE: Okay. 16 BY MR. WEEDE: 17 Q. So you're -- just to make 18 sure I have your testimony, you did 19 not enter into an attorney-client 20 relationship on November 27th, 2000, 21 with members of Lewis Rice; is that 22 correct? 23 MR. CRONER: Objection to 24 the extent you're asking him to call</p>	<p style="text-align: center;">116</p> <p>1 sentence of Paragraph 64. 2 LRF, again, that's 3 referring to Lewis Rice, and 4 Plaintiffs entered into an 5 attorney-client relationship and an 6 oral contract for the provision of 7 legal services in or about October 8 2000 during a meeting between 9 Plaintiff Penske and representatives 10 of Lewis Rice -- or LRF, referring to 11 Lewis Rice. 12 Is that an accurate 13 statement? 14 A. Again, if you're using the 15 word in or about, I signed a -- I 16 executed a document December 1. I 17 guess that's a legal definition, what 18 you mean by in or about. It's an 19 approximate time period. 20 Q. Okay. But what you signed 21 on December 1st, 2000, was not an 22 oral contract; is that correct? 23 A. Yeah, it was a written 24 engagement letter.</p>
<p style="text-align: center;">115</p> <p>1 for some sort of legal conclusion. 2 THE WITNESS: Yeah. 3 MR. CRONER: Whether he 4 entered into one, whether he could 5 have asserted one. 6 You can answer as best you 7 understood it. 8 BY MR. WEEDE: 9 Q. What was your 10 understanding? Let's put it this 11 way: What was your understanding? 12 Did you understand that you had 13 entered into an attorney-client 14 relationship with members of Lewis 15 Rice on November 27th, 2000? 16 A. I -- I -- I -- I believe 17 that the -- it was entered into 18 December 1, but I don't -- I don't 19 believe it was entered into on the 20 27th. 21 Q. Please turn to Paragraph 22 64, please. 23 A. As I say -- okay. 64. 24 Q. I'll read you the first</p>	<p style="text-align: center;">117</p> <p>1 Q. So to the extent that this 2 paragraph says that Lewis Rice and 3 Plaintiffs entered into an 4 attorney-client relationship and an 5 oral contract for the provision of 6 legal services in or about October 7 2000, during a meeting between 8 Plaintiff Penske and representatives 9 of LRF, that's not a true statement. 10 Is that what you're telling 11 me? 12 A. Yeah. I met with them 13 December 1. I mean, excuse me, 14 November 27th was the first meeting I 15 had with them. 16 Q. Did you enter into an oral 17 contract for the provision of legal 18 services on November 27th, 2000, with 19 members of Lewis Rice? 20 MR. CRONER: Objection; 21 calls for a legal conclusion. 22 You can answer to the best 23 you can. 24 THE WITNESS: I -- I -- as</p>



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# EXHIBIT J

*IN THE MATTER OF:*

*Richard H. Penske, et al*  
*vs.*  
*Lewis, Rice & Fingersh, L.C.*

*Cause No. 05-CV-4436*

*Deposition of Michael D. Mulligan*  
*3/3/2006*

*Gore Perry Gateway & Lipa Reporting*  
*515 Olive Street*  
*Suite 700*  
*St. Louis, MO 63101*

*Full GLOSSARY included with this DepoScript*

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(1) attracted its clients?  
(2) A: No.  
(3) Q: Did anyone ever explain to you how Heritage  
(4) went about procuring clients?  
(5) A: No.  
(6) Q: Did you ever ask?  
(7) A: No, that I can -- I don't remember that I  
(8) ever asked.  
(9) Q: I take it Mr. Penske, for example, was not  
(10) an existing client of Lewis, Rice's at the time that  
(11) Mr. Kornman or Mr. Canada first contacted you about  
(12) him?  
(13) A: He was not.  
(14) Q: Now, after you first had this call from  
(15) Kornman or Canada about Mr. Penske, what did you do  
(16) within the firm?  
(17) A: What I did was to organize -- organize  
(18) people who would attend the meeting.  
(19) Q: This was the meeting with Mr. Penske?  
(20) A: Yes, sir.  
(21) Q: Do you remember when that meeting took  
(22) place?  
(23) A: Not the precise date, no.  
(24) Q: I'll represent to you that Mr. Falk  
(25) testified yesterday, and there are some exhibits

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(1) that I certainly can show you that indicate, that  
(2) the meeting took place on November 27th of 2000.  
(3) Q: Would you have a recollection that it was  
(4) any different than that?  
(5) A: No, sir.  
(6) Q: And I take it that your contact by  
(7) Mr. Kornman or Mr. Canada took place at some point  
(8) prior to that?  
(9) A: The telephone communication, yes, sir.  
(10) Q: And do you know whether Lewis, Rice did any  
(11) work in connection with Mr. Penske prior to the  
(12) first meeting with Mr. Penske?  
(13) A: I don't remember that we did, personally.  
(14) Q: I'd like to show him Exhibit No. 4.  
(15) Exhibit No. 4 was marked yesterday,  
(16) Mr. Mulligan, and I'll ask you, have you seen this  
(17) document before?  
(18) A: No, sir.  
(19) Q: Do you know what it is? Do you recognize  
(20) what it is?  
(21) A: It appears to be a receipt -- a Federal  
(22) Express receipt.  
(23) Q: It's an Airbill, correct?  
(24) A: Yes.  
(25) Q: And the sender's name is listed as your

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(1) name. Do you see that?  
(2) A: Yes, sir.  
(3) Q: And it's dated November 16th, 2000; correct?  
(4) Top, left hand.  
(5) A: Yes.  
(6) Q: And the recipient is indicated to be a  
(7) Mr. Brian Czerwinski?  
(8) A: Czerwinski, yes.  
(9) Q: Who is Mr. Brian Czerwinski; do you know?  
(10) A: Brian Czerwinski was an employee of The  
(11) Heritage Organization.  
(12) Q: And according to the Airbill, at least you  
(13) were sending him a package by first overnight  
(14) delivery, Federal Express, on November 16th, and he  
(15) was located in Bethlehem, Pennsylvania.  
(16) Do you see that?  
(17) A: Yes, sir.  
(18) Q: Do you remember doing that, Mr. Mulligan?  
(19) A: No.  
(20) Q: Do you have any idea what was in a package  
(21) that you would have been sending Mr. Czerwinski at  
(22) this time?  
(23) A: I don't have any firm knowledge, no.  
(24) Q: Do you know -- well, let me back up for a  
(25) minute. Other than knowing that Mr. Czerwinski was

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(1) an employee for Heritage, did you ever have any  
(2) direct contact with him?  
(3) A: Oh, frequently.  
(4) Q: Frequently? Okay. So you spoke with him?  
(5) A: Yes, sir.  
(6) Q: Do you have any knowledge as to why he might  
(7) have been in Bethlehem, Pennsylvania on or about  
(8) November 16th?  
(9) A: I have no knowledge as to why he was there.  
(10) Q: You don't remember him telling you that or  
(11) anything like that?  
(12) A: No, sir.  
(13) Q: You'll see there is a -- there is an  
(14) internal billing reference, item No. 2, sort of  
(15) right in the middle of the left-hand side of the  
(16) Airbill?  
(17) A: Yes.  
(18) Q: The number is 109210.23077?  
(19) A: Yes.  
(20) Q: From what I understand now from Mr. Falk  
(21) yesterday, that apparently appears to be a client  
(22) matter number used by Lewis, Rice; is that correct?  
(23) A: Yes, sir.  
(24) Q: Do you know what that client matter number  
(25) is?

# EXHIBIT K



*IN THE MATTER OF:*

*Richard H. Penske, et al*  
*vs.*  
*Lewis, Rice & Fingersh, L.C.*

*Cause No. 05-CV-4436*

*Deposition of William J. Falk*  
*3/2/2006*

*Gore Perry Gateway & Lipa Reporting*  
*515 Olive Street*  
*Suite 700*  
*St. Louis, MO 63101*

*Full GLOSSARY included with this DepoScript*

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(1) Q: Was he a lawyer; do you know?  
(2) A: I do not know.  
(3) Q: Do you have any idea why Mr. Czerwinski was  
(4) in Bethlehem on November 16th of 2000?  
(5) A: I have no information about that, no.  
(6) Q: Were you personally working on anything  
(7) relating to Richard Penske at this point in time?  
(8) A: I'd have to look at my time entries to tell  
(9) you for certain. I said earlier that I began  
(10) working on Mr. Penske's matters several days before  
(11) the meeting. I don't know whether we began as  
(12) early -- or whether I began, I should say, as early  
(13) as November 16th.  
(14) Q: Would you understand, from the fact that  
(15) Mr. Mulligan was sending Mr. Czerwinski a package on  
(16) November 16th, that someone at Lewis, Rice was doing  
(17) some sort of work for Richard Penske?  
(18) A: I do not -- I can't say that for sure. That  
(19) would be reflected in the time entries, and I  
(20) believe those have been provided.  
(21) Q: Do you know whether, as of November 16th,  
(22) 2000, Lewis, Rice had received authorization from  
(23) Mr. Penske to do any work on his behalf?  
(24) A: I do not know.  
(25) Q: Do you know whether, in fact, Lewis, Rice

(1) Q: And so you can't tell me, I take it,  
(2) whether, in fact, Mr. Penske had authorized  
(3) Mr. Mulligan to have Lewis, Rice undertake any work  
(4) on his behalf; fair to say?  
(5) A: That's correct. I cannot say. I cannot say  
(6) that Mr. Penske authorized Mr. Mulligan.  
(7) Q: In the middle -- actually, they are sort of  
(8) numbered items on this FedEx Airbill. Item No. 2  
(9) says, "Your internal billing reference."  
(10) Do you see that?  
(11) A: I see that.  
(12) Q: Is that essentially an internal Lewis, Rice  
(13) client matter number?  
(14) A: It has the structure of one, yes.  
(15) Q: And if that is in fact the case, I take it  
(16) the first series of digits represents the client  
(17) number; am I right?  
(18) A: That's how we generally use them, yes.  
(19) Q: And the second set of digits after the  
(20) decimal point represents the matter number; correct?  
(21) A: That's how we use them, yes.  
(22) Q: Do you recognize that particular client  
(23) matter number?  
(24) A: I can't say I do.  
(25) Q: Do you recognize the client number?

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(1) was receiving whatever instructions it was receiving  
(2) with regard to Mr. Penske strictly from Heritage?  
(3) A: I think instructions is probably a strong  
(4) word. My understanding was that Mr. Penske had been  
(5) referred as a potential client to Lewis, Rice, and  
(6) to the extent that Lewis, Rice was beginning work,  
(7) it would have been in anticipation of forming an  
(8) attorney-client relationship.  
(9) Q: But to the extent that Lewis, Rice was doing  
(10) any work, as you described it, who had authorized  
(11) Lewis, Rice to do that work?  
(12) A: The authorization, to the extent that there  
(13) was any authorization given, would have been from  
(14) Mr. Mulligan.  
(15) Q: To do the work?  
(16) A: (Nods head.)  
(17) Q: You have to say yes or no.  
(18) A: What was the question? Before I say yes, I  
(19) want to know what the question was.  
(20) (Record read.)  
(21) THE WITNESS: That would be a yes.  
(22) Q: (By Mr. Croner) And do you know whether  
(23) Mr. Mulligan had had any direct contact of any kind  
(24) with Mr. Penske at that point?  
(25) A: I do not know.

(1) A: I do not.  
(2) Q: Do you know whether in fact a client number  
(3) had been opened for Mr. Penske at this point in  
(4) time?  
(5) A: I do not.  
(6) Q: During the time that you have been working  
(7) or did work in connection with clients relating to  
(8) Heritage, did Lewis, Rice have a separate client  
(9) number for Heritage?  
(10) A: Yes, we did, because at one point the firm  
(11) had done some work for Heritage.  
(12) Q: And do you recognize whether this particular  
(13) number, 109210, is the Heritage client number?  
(14) A: I don't recognize it one way or another.  
(15) Q: So you can't tell me it's also -- I take it,  
(16) that it's not a Heritage client number; correct?  
(17) A: It is correct that I cannot tell you it is  
(18) not the Heritage number.  
(19) Q: Okay.  
(20) A: Did I just say something? I'm not sure what  
(21) that meant.  
(22) MR. CRONER: This is Plaintiffs' No. 5, I  
(23) think.  
(24) (Plaintiffs' Exhibit 5 was marked for  
(25) identification.)

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(1) the scope of the relationship between Penske and  
(2) Lewis, Rice?

(3) A: I didn't check on whether an engagement  
(4) letter existed for each of those, no, I didn't.

(5) Q: And the first one I think that you  
(6) described, which related to the furnishing of the  
(7) original opinion, is that Plaintiffs' No. 16, the  
(8) December 1st, 2000 letter?

(9) A: It's the first of the engagement letters  
(10) relating to what we'd call the Heritage transaction  
(11) or the one with the -- the one that's at issue here  
(12) is the December 1, 2000, Exhibit 16.

(13) MR. CRONER: Mark this as 25, Nancy.  
(14) (Plaintiffs' Exhibit 25 was marked for  
(15) identification.)

(16) Q: (By Mr. Croner) I'm going to show you,  
(17) Mr. Falk, what the reporter has marked as  
(18) Plaintiffs' Deposition Exhibit No. 25, a letter, two  
(19) pages, bearing Bates Nos. Penske 000874 and 875,  
(20) purporting to be on the letterhead of Lewis, Rice &  
(21) Fingersh, dated February 22nd, 2001.

(22) I'll ask you, have you ever seen this  
(23) document before?

(24) A: Yes, I have.

(25) Q: And when did you last see this document?

(1) these estate planning services that are described in  
(2) Exhibit 25 from the initial services that were  
(3) provided pursuant to whatever that earlier  
(4) engagement letter was.

(5) Q: December 1st, 2000?

(6) A: December 1, right. I know that there was a  
(7) separate matter number assigned, for example, to  
(8) distinguish the services on the income tax audit.

(9) Q: Okay. But can you tell me whether there was  
(10) a separate engagement letter executed for the  
(11) matters related to the audit?

(12) A: And that goes back to my earlier answer. I  
(13) don't know.

(14) MR. CRONER: Make that 26.

(15) (Plaintiffs' Exhibit 26 was marked for  
(16) identification.)

(17) Q: (By Mr. Croner) Let me show you what I have  
(18) marked as Deposition Exhibit No. 26, Mr. Falk, a  
(19) single-page document purporting to be on the  
(20) letterhead of Lewis, Rice & Fingersh, single Bates  
(21) No. 21756, Penske number. What is this, Mr. Falk?

(22) A: It appears to be a bill.

(23) Q: Prepared by Lewis, Rice, I take it?

(24) A: Yes.

(25) Q: Sent to Mr. Penske in Pennsylvania?

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(1) A: Yesterday.

(2) Q: It appears, up in the top left-hand corner,  
(3) Mr. Mulligan's name, so I take it you didn't prepare  
(4) this; is that fair to say?

(5) A: That's correct.

(6) Q: And what is your understanding of what this  
(7) is?

(8) A: This is an engagement letter for estate  
(9) planning services that were to be provided by Lewis,  
(10) Rice for Mr. Penske and his family.

(11) Q: And is this a different set of services than  
(12) was contemplated by the original retention letter  
(13) executed in December of 2000?

(14) A: Yes.

(15) Q: And when Lewis, Rice has different pieces of  
(16) work that it's working on for a particular client,  
(17) do those separate pieces of work get assigned  
(18) different matter numbers?

(19) A: Sometimes.

(20) Q: Do you know whether separate matter numbers  
(21) were assigned for the work done for Mr. Penske?

(22) A: It's my understanding that there were not  
(23) or -- let's be clear about it.

(24) It's my understanding that there were not  
(25) separate matter numbers assigned to distinguish

(1) A: Yes.

(2) Q: Now, it says, "Our Matter Number." Do you  
(3) see that?

(4) A: It's addressed to Mr. Penske in  
(5) Pennsylvania. I don't know if it was sent or hand  
(6) delivered or exactly what.

(7) Q: Do you have any reason to believe it didn't  
(8) end up in Pennsylvania?

(9) A: I don't know whether Mr. Penske was here,  
(10) for example.

(11) Q: Do you have -- well, let me ask you: Other  
(12) than November 27th of 2000, was Mr. Penske ever at  
(13) Lewis, Rice's offices again?

(14) A: Tell me again, what was the date you  
(15) referred to?

(16) Q: Other than the initial meeting that we've  
(17) talked about that occurred on November 27th of 2000,  
(18) did Mr. Penske ever come to Lewis, Rice's office in  
(19) St. Louis again?

(20) A: Yes.

(21) Q: And when was that?

(22) A: I know that he was here in 2001, once,  
(23) perhaps twice, in connection with the income tax  
(24) examination. I do not know whether he visited our  
(25) offices in connection with any of the estate

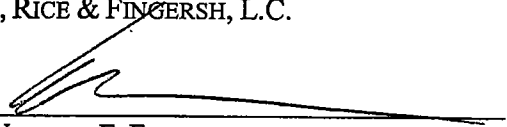
# EXHIBIT L

**SUPPLEMENTAL DECLARATION OF WILLIAM J. FALK**

1. My name is William J. Falk. I am over the age of 18 years and am fully competent to make this declaration.
2. I am a member of Lewis, Rice & Fingersh, L.C. ("Lewis, Rice"), defendant in this action, and am authorized to make this declaration on its behalf. I have personal knowledge of the facts contained in ¶ 3 of this declaration, which are all true and correct. The facts set forth in ¶ 4 of this declaration are true and correct approximations, based upon information compiled from documents and information provided by accounting staff and other knowledgeable persons at Lewis, Rice & Fingersh, L.C.
3. Lewis, Rice currently has 163 attorneys who are members, of counsel, or associates.
4. In the agreed upon discovery period between January 1, 2000 and August 18, 2005, matters with a connection to Pennsylvania were not significant compared to Lewis, Rice's overall client base. As of February 1, 2003, when Lewis, Rice converted to its current time and billing software, the firm had approximately 3,996 active clients for which there were approximately 7,876 open matters. By August 2005, Lewis, Rice had approximately 6,331 active clients for which attorneys handled approximately 9,934 open matters.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13<sup>th</sup> day of April 2006.

LEWIS, RICE & FINGERSH, L.C.

By:   
WILLIAM F. FALK  
Its: Member